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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,199	09/17/2003	Eric Kolb	DEP-5157	3888
27777 7590 04/13/2007 PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			EXAMINER PHILOGENE, PEDRO	
			ART UNIT 3733	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/13/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/664,199

Applicant(s)

KOLB, ERIC

Examiner

Pedro Philogene

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6,7 and 9-16 is/are pending in the application.
- 4a) Of the above claim(s) 6,9 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,7,10-14,16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3,4,5, 7, 10-14,16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collins et al. (6,613,053) in view of Frigg et al. (6,206,881).

With respect to the above claims, Collins et al disclose a system comprising a bone anchor (14), as best seen in FIG.2, having a proximal head and a distal portion configured to engage a bone, and a plate (10) having at least one hole (11) including a plurality of concentric annular bores (16,17) as best seen in FIG.2 formed in the plate, at least one of the plurality of concentric annular bores being sized and shaped to engage the proximal head of the bone anchor to facilitate coupling of the bone anchor to the plate, the plurality of concentric annular bores including a first bore with first diameter and a second bore with a second diameter different from the first diameter; as best seen in FIG.2.

With respect to claims 3,4, Collins et al disclose all the limitations; as set forth in column 2, lines 5-10, lines 35-43; and as best seen in FIGS.1-3.

With respect to the above claims, it is noted that Collins et al discloses all the limitations, except for the proximal head being tapered and the concentric annular bores forming a generally frusta-conical shaped hole; as claimed by applicant. However, in a similar art, Frigg et al evidence the use of a proximal head that is tapered and bores

forming generally frusta-conical shaped hole to provide positive locking between the screw head and the plate holes.

Therefore, given the teaching of Frigg et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Collins; as taught by Frigg et al., to provide positive locking between the screw head and the plate holes.

Response to Amendment

Applicant's arguments filed 1/29/07 have been fully considered but they are not persuasive. The only reason, Frigg is being used as a second reference, is to compensate for Collins's lack of a teaching of a frusto-conical shape in the screw head and the plate hole. The frusto-conical shape provides at least a snap fit engagement. Applicant is arguing that modifying the head of the bone screw of Collins to the taper described in Frigg would necessitate removal of the outwardly projecting rib and, in absence of the outwardly projecting rib, the bone screw may be free to back out from the plate. The examiner begs to differ, since there is no need to remove the outwardly projecting rib of Collin. Again one only needs to change or reconfigure the shape of the screw head and the hole in the plate, no other structure needs to be changed or added. It is well known I the art that the change in form or shape is nothing more than one of numerous configurations a person of ordinary skill in the art would find obvious for the purpose of providing mating surface in the screw head and the plate. See in re Dailey, 149 USPQ 47 (CCPA 1976).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

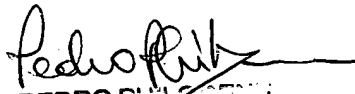
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene
April 6, 2007


PEDRO PHILOGENE
PRIMARY EXAMINER